

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1714 OF 2004

Yesumithra Sabanna,)
Mukund Nagar "A" Ward, Room No.513,)
Behind Sumithra Hotel, Dharavi,)
Mumbai - 400 017.).. Petitioner

Versus

1. Chief Manager,)
Central Railway Employee's)
Co-operative Credit Society Ltd.,))
65, A.N.M.Joshi Marg,)
Platform No.1, Near Byculla)
Railway Station,)
Mumbai - 400 027.)

2. P.K. Chavre,)
President, Industrial Court,)
having office at)
New Administrative Building,)
Bandra (E), Mumbai - 400 051.).. Respondents

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The petitioner in person.

Shri K.S.Bapat for Respondent No.1.

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CORAM : R.M.S.KHANDEPARKAR, J

DATED : 11TH AUGUST, 2004

ORAL JUDGMENT :

1. Heard. Rule. By consent, the rule is made returnable forthwith.

2. The petitioner challenges the order dated 16th February, 2004 passed by the Industrial Court, Mumbai, in Review Application (ULP) No.8 of 2003 on the ground that the Industrial Court having disposed of the Revision Application under Section 44 of the Maharashtra Recognition Trade Union and Prevention of Unfair Labour Practice Act, 1971, by its judgment dated 17th December, 2002 it could not have reviewed the said judgment under the impugned order as the Industrial Court disposing of the matter under Section 44 of the said Act has no jurisdiction to review its order.

3. There is no dispute that the said Act does not specifically provide for review power to the Industrial Court once the Industrial Court disposes the matter under Section 44 of the said Act. Indeed, the law on the point is well settled. However, referring to the decision of the learned Single Judge in **Association of Engineering Workers Mumbai v. A.T.V.Ltd., Mumbai & Anr.**, reported in 2002 II CLR

387, the learned advocate for the respondents has sought to justify the impugned order as being just and appropriate in the facts and circumstances of the case. It is the contention on behalf of the respondents that one of the issues which ought to have been decided by the Industrial Court while disposing the Revision Application under Section 44 of the said Act was not decided and, therefore, the respondents were compelled to approach the Industrial Court by the review application.

4. Once the law on the point being very clear regarding the absence of review power to the Industrial Court on disposal of the revision application under Section 44 of the said Act, the contention that in the peculiar facts and circumstances of the case wherein it was disclosed that one of the issues which could have been decided by the revisional court was not decided, would empower the Industrial Court to review the order disposing revision application cannot be accepted. Undoubtedly, if a party is aggrieved by the improper exercise of its jurisdiction on the part of the Industrial Court while dealing with the matter in its revisional jurisdiction, it would entitle the aggrieved party to agitate such issue before the High Court in appropriate proceedings but certainly not before the same Court in Review Petition when no such review power is specifically available under the Statute to

such Court which has been constituted under the Statute with limited power of revision.

5. The decision in **Association of Engineering**

Workers (supra) is of no help to the respondents to justify the impugned order. The said decision was given in the peculiar facts and circumstances of the case and bearing in mind the law laid down by the Apex Court in **S.Nagraj and Ors. v. State of Karnataka and Anr.**, reported in 1994(1) LLJ 857, wherein it was ruled that "if the Court finds that the order was passed under a mistake and it would not have exercised the jurisdiction but for the erroneous assumption which in fact did not exist and its perpetration shall result in miscarriage of justice, then it cannot on any principle be precluded from rectifying the error." Exercising jurisdiction on erroneous assumption that it exists, is different from improper exercise of jurisdiction in ignoring a particular issue while deciding a matter and it can never be equated with the former error which would render the order to be nullity. Being so, the decision of the learned Single Judge in **Association of Engineering Workers' case (supra)** is of no help to justify the impugned order. Once it is apparent that the impugned order is without jurisdiction, the same cannot be sustained and is liable to be quashed and set aside. Needless to say that once the order without jurisdiction is a nullity, it does not create any right in favour of the party in

whose favour such an order is passed, nevertheless to allow such order in the records of the Courts would result in miscarriage of justice and, therefore, it would not only empower the Court, who has passed such order to take such steps which would avoid such miscarriage of justice, but it would be its duty to do so in the interest of justice. That, however, would not entitle the Industrial Court to exercise such powers which are not given to it under the Statute under which it is established.

6. Non-consideration of an issue while disposing

a matter would amount to improper exercise of its jurisdiction by the adjudicating body or Court, but it would not render the order to be nullity. Such an order can be certainly brought to the notice of higher authority or Court having supervisory or revisional power but it cannot entitle to review its own order by such lower forum or Court, unless the power for review of its own order is specifically given to it under the statute under which the proceedings are dealt with.

7. In the circumstances, therefore, the petition

succeeds and the impugned order is hereby quashed and set aside and the rule is made absolute in above terms with no order as to costs.

8. Certified copy be expedited.
